

# THE RESULTING LEGAL CONSEQUENCES TO THE DECISION OF THE SUPREME COURT NUMBER : 05 P / HUM / 2018 ON THE BUSINESSMEN IN NATURAL GAS MINING THAT USING NATURAL LIQUIDFIELD GAS BASED ON LAW NUMBER: 42 OF 2009 JUNCTO LAW NUMBER: 8 OF 1983 (Study of Value Added Tax of Goods & Services and Tax of Sale of Luxury Goods)

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## ABSTRACT

One of the fuels that is encouraged in its use for gas power plants, industries and settlements includes Liquidfield Natural Gas. On December 28, 2012, the Minister of Finance issued Regulation of the Minister of Finance Number 252 / PMK.011 / 2012 concerning Natural Gas which is included in the types of goods that are not subject to Value Added Tax. PT. Donggi Senoro LNG submitted a request for a judicial review of Article 1 paragraph (2) letter b of the Minister of Finance Regulation Number 252 / PMK.011 / 2012 concerning Natural Gas which is included in the types of goods that are not subject to Value Added Tax. Based on the petition, the judge of the Supreme Court, through decision number 05 P / HUM / 2018, granted the application and stated Article 1 paragraph (2) letter b of the Minister of Finance Regulation Number 252 / PMK.011 / 2012 concerning Natural Gas Included in Types of Goods that are not Subject to Value Added Tax, contradicts Article 4A paragraph (2) of the VAT Law and Article 7 and Article 8 of Law Number 12 Year 2011 concerning the Establishment of Legislation. In research using a qualitative research model, with a statute approach. Based on the results of research, business actors in the natural gas mining sector using Liquefied Natural Gas must be confirmed as taxable entrepreneurs and need to make adjustments to cooperation contracts.

**Keywords:** Liquidfield, Natural Gas, Businessman, Tax Payer.

## ABSTRAK

Salah satu bahan bakar yang digalakkan dalam penggunaannya untuk pembangkit listrik tenaga gas, industri-industri, dan pemukiman antara lain Liquidfield Natural Gas. Pada tanggal 28 Desember 2012, Menteri Keuangan mengeluarkan Permenkeu, Nomor 252/PMK.011/2012 tentang Gas Bumi yang termasuk dalam jenis barang yang tidak dikenai PPN. PT. Donggi Senoro LNG mengajukan permohonan untuk menguji materi (judicial review) atas Pasal 1 ayat (2) huruf b Peraturan Menteri Keuangan Nomor 252/PMK.011/2012 tentang Gas Bumi yang termasuk dalam jenis barang yang tidak dikenai PPN. Berdasarkan permohonan tersebut hakim Mahkamah Agung melalui putusan nomor 05 P/HUM/2018, mengabulkan permohonan dan menyatakan Pasal 1 ayat (2) huruf b Permenkeu Nomor 252/PMK.011/2012 tentang Gas Bumi yang Termasuk dalam Jenis Barang yang Tidak Dikenai PPN, bertentangan dengan Pasal 4A ayat (2) Undang-Undang PPN dan Pasal 7 dan Pasal 8 UU Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, dan karenanya tidak mempunyai kekuatan hukum mengikat dan tidak berlaku untuk umum. Akibat hukum yang ditimbulkan atas Putusan Mahkamah Agung Nomor 05 P/HUM/2018 terhadap pelaku usaha di bidang pertambangan gas bumi yang menggunakan Liquefied Natural Gas dan pelaksanaan Putusan Mahkamah Agung Nomor 05 P/HUM/2018 oleh pelaku usaha di bidang pertambangan gas bumi yang menggunakan Liquefied Natural Gas. Hasil penelitian Pelaku usaha di bidang pertambangan gas bumi yang menggunakan Liquefied Natural Gas harus dikukuhkan sebagai pengusaha kena pajak dan perlu melakukan penyesuaian kontrak kerja sama

**Kata Kunci :** Liquidfield, Natural Gas, Pengusaha kena pajak

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## A. Introduction

Natural gas is a mixture composed of hydrocarbon gases ( $C_nH_{d2n+2}$ ) where these gases are flammable and the main composition of natural gas itself consists of methane ( $CH_4$ ) which is the hydrocarbon molecule with the shortest and lightest chains. Natural gas is also a major source of helium gas. The characteristics of natural gas in its pure state include colorless, formless, and odorless. In addition, natural gas is capable of producing clean combustion and also produces almost no emissions that can damage the environment. In addition, natural gas can also contain ethane, propane, butane, pentane, and also gases containing sulfur. The main contaminant (impurity) of a gas is usually a mixture of organosulfur and hydrogen sulfide which must be separated. A gas with a significant amount of sulfur impurity is called sour gas and is often referred to as "acid gas".<sup>74</sup>

One of the fuels that is being promoted in its use for gas-fired power plants, industries and settlements includes *Liquidfield Natural Gas*. through the promotion of Liquidfield Natural Gas, the business in Liquidfield Natural Gas is growing rapidly. On December 28, 2012, the Minister of Finance issued Regulation of the Minister of Finance Number 252 / PMK.011 / 2012 concerning Natural Gas which is included in the types of goods that are not subject to Value Added Tax. With the inclusion of Liquidfield Natural Gas into the types of goods that are not subject to Value Added Tax, it is hoped that it can reduce dependence on the use of fuel oil. However, behind the development of the Liquidfield Natural Gas business, it turns out that there are companies that feel disadvantaged by the stipulation of Liquidfield Natural Gas as taxable goods. PT. Donggi Senoro LNG is an Indonesian liquidfield natural gas producer.

PT. Donggi Senoro LNG submitted a request for a judicial review of Article 1 paragraph (2) letter b of the Minister of Finance Regulation Number 252 / PMK.011 / 2012 concerning Natural Gas which is included in the type of goods which are not subject to Value Added Tax issued by the Minister Finance on December 28, 2012 against Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 42 of 2009 concerning the Third

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<sup>74</sup>.Pradnya A. Putri, Shunta S. Hajar, Gede Wibawa dan Winarsih, Plant Design of Cluster LNG (*Liquidfield Natural Gas*) in Bukit Tua Wll, Gersik, Jurnal Teknik Pomits Volume 2, No. 1, (2013) ASSN:2337-3539 (2301-9217 Print)

Amendment to Law Number 8 1983 regarding Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

Regarding the petition for objection to the judicial review rights of the Petitioner for PT DONGGI SENORO LNG, the judges of the Supreme Court through the decision number 05 P / HUM / 2018 decided:

- a. Granted the petition for objection to the right of judicial review from the Petitioner PT DONGGI SENORO LNG;
- b. State that Article 1 paragraph (2) letter b of the Regulation of the Minister of Finance Number 252 / PMK.011 / 2012 dated December 28, 2012 concerning Natural Gas Included in the Types of Goods Not Subject to Value Added Tax, contradicts higher laws and regulations, namely Article 4A paragraph (2) of the PPN Law and Article 7 and Article 8 of Law Number 12 Year 2011 concerning the Formation of Legislation, and therefore do not have binding legal force and do not apply to the public.

With the granting of the petition for objection to the judicial rights of the Petitioner for PT DONGGI SENORO LNG, there are several consequences that must be taken by business actors in the natural gas mining sector using *Liquidfield Natural Gas*.

## **B. Focus of Problems.**

In this research, the problems as mentioned above are formulated as follows:

1. What is the legal consequence of the Supreme Court Decision Number 05 P / HUM / 2018 on business actors in the natural gas mining sector using Liquefied Natural Gas?
2. How is the implementation of the Supreme Court Decision Number 05 P / HUM / 2018 by business actors in the natural gas mining sector using Liquidfield Natural Gas?

## **C. Research Methods.**

In conducting research to ensure maximum performance, the researchers used the following methods:

### **1. Research Method.**

The research method used an empirical juridical approach. As for what is meant by the empirical juridical method is legal research on the application and application of normative

legal provisions in action at any event expected to take place perfectly if the formulation of normative legal provisions is clear and firm and complete.<sup>75</sup>

## **2. Type of Research.**

The type of research used in this study is a qualitative research method. The characteristics of qualitative research are the data presented in the form of descriptions of words, opinions, expressions, ideas, norms, or rules of the phenomenon under study.<sup>76</sup> Qualitative data were obtained from interviews and from other data sources related to the Supreme Court Decision Number 05 P / HUM / 2018.

## **3. Data Collection Techniques.**

In this study, the data collection methods used are as follows:

### **a. Literature review**

Literature study is the study of written information about the law that comes from various sources and is widely published that is relevant to the issues discussed in research. Literature study is carried out by studying books, laws and regulations and other documents that support the formulation of the problem. Literature study has the stages of determining the source of data that has been collected in order to determine its relevance in the need for problem formulation.

### **b. Field Study.**

1. Studying documents and reviewing Supreme Court Decision Number 05 P / HUM / 2018.
2. Primary data collection techniques can be done by means of unstructured interviews (open-ended) and statements are more open in nature, so that respondents can freely answer the questions posed in order to get as much information as possible. Those who are considered competent to be respondents in this study include the State Civil Service in the Ministry of Finance and the Ministry of Law and Human Rights.

## **D. Finding and Discussion.**

### **1. References:**

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<sup>75</sup> Abdul adir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), hlm 134.

<sup>76</sup> Lexy J. Moleong, *Metode Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2004), hlm. 3

In providing in-depth and strengthening of research material, theoretical references are used as follows:

**a. State of Law**

The concept of a rule of law according to Aristotle, a state that stands on the law that guarantees justice to its citizens. According to him, justice is a condition for achieving the happiness of life for citizens to be a country. For Aristotle, who ruled in the state was not a real human being, but a just mind, while the real ruler was only the holder of law and balance. The meaning of the rule of law itself is essentially rooted in the concept and theory of the rule of law, which in principle states that the highest power in a state is law, therefore all tools of the state, regardless of name, including citizens must obey and obey and uphold the law without exception.<sup>77</sup>

There are several interpretations regarding the rule of law, including *rechtsstaat*, rule of law, and *etat de droit*. At first glance this term contains the same meaning but is actually different. Even in the development of the concept of rule of law, the two terms also develop, both theoretically-conceptually and in terms of practical-operation.<sup>78</sup>

A country can be said to be a rule of law if It the elements of a rule of law. Friedrich Julius Stahl states the characteristics of a rule of law as follows:

- 1) There is recognition of basic human rights.
- 2) There is a distribution of power.
- 3) Government based on regulations
- 4) The existence of a State Administrative Court<sup>79</sup>

Besides Julius Stahl, the concept of a rule of law in Continental Europe was also developed by Immanuel Kant, Paul Laband, Fichte and others by using the German term "*rechtsstaat*". In the Anglo-Saxon tradition the development of the rule of law concept was pioneered by A. V. Dicey with the term "the rule of law". A. V Dicey presents the elements of the rule of law as follows:

- 1) *supremacy of law*
- 2) *equality before the law.*

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<sup>77</sup> B. Hestu Cipto Handoyo, *Hukum Tata Negara Indonesia "Menuju Konsolidasi Sistem Demokrasi"*, (Jakarta: Universitas Atma Jaya, 2009). Hlm. 17.

<sup>78</sup> Majda El. Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia* (Jakarta: Kencana, 2005). Hlm. 21

<sup>79</sup> Oemar Seno Adji, *Prasarana Dalam Indonesia Negara Hukum*, (Jakarta: Simposium UI, 1966). Hlm.

3) *constitution based on human rights*<sup>80</sup>

The four principles of "rechtsstaat" developed by Julius Stahl above can in essence be combined with the three principles of "Rule of Law" developed by A.V. Dicey to mark the characteristics of the modern rule of law today. In fact, by "The International Commission of Jurist", the principles of rule of law are added to the principles of independence and impartiality of judiciary which today are increasingly felt to be absolutely necessary in every democratic country. The principles which are considered the essential characteristics of the rule of law according to "The International Commission of Jurists" are:

- 1) The state must obey to the law.
- 2) The government respects individual rights.
- 3) Free and impartial trial.

Professor Utrecht distinguishes between formal law states or classical legal states, and material law states or modern legal states.<sup>81</sup> According to Arief Sidharta, citing the opinion of Scheltema, who formulated his views on the elements and principles of a new rule of law, which includes 5 (five) things as follows<sup>82</sup>

Recognition, respect and protection of human rights which are rooted in respect for human dignity;

- 1) The principle of legal certainty applies. The rule of law aims to ensure that legal certainty is manifested in society. Law aims to realize legal certainty and high predictability, so that the dynamics of life together in society are "predictable".
- 2) The application of equality (Similia Similius or Equality before the Law) in a rule of law, the government may not give special attention to certain people or groups of people, or discriminate against certain people or groups of people.
- 3) The principle of democracy where everyone has the same rights and opportunities to participate in government or to influence government actions

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<sup>80</sup> Diana Halim Koentjoro, *Hukum Administrasi Negara*, (Bogor: Ghalia Indonesia, 2004). Hlm. 34.

<sup>81</sup> Utrecht, *Pengantar Hukum Administrasi Negara Indonesia*, (Jakarta: Ichtiar, 1962). Hlm. 9.

<sup>82</sup> Arief Sidharta, "Kajian Kefilsafatan tentang Negara Hukum", *Jentera (Jurnal Hukum)*, "Rule of Law", Pusat Studi Hukum dan Kebijakan (PSHK), Jakarta, edisi 3 Tahun II, November 2004, hlm.124- 125

- 4) The government and officials carry out the mandate as public servants in the context of realizing public welfare in accordance with the objectives of the state concerned.

#### **b. The Justice.**

John Rawls, who is seen as a “liberal-egalitarian of social justice” perspective, argues that justice is the main virtue of the presence of social institutions. However, virtue for the whole of society cannot exclude or challenge the sense of justice of everyone who has obtained a sense of justice. Especially weak people who seek justice.<sup>83</sup>

Specifically, John Rawls developed the idea of the principles of justice by making full use of his creative concepts known as the "original position" and the "veil of ignorance".<sup>84</sup>. Rawls's view positions the existence of an equal and equal situation between each individual in society. There is no distinction between status, position or having a higher position from one another, so that one party can make a balanced agreement, that is Rawls's view as an "original position" which rests on the notion of a reflective equilibrium based on the characteristics of rationality. ), freedom (freedom), and equality (equality) in order to regulate the basic structure of society (basic structure of society). Meanwhile, the concept of "veil of ignorance" is translated by John Rawls that everyone is faced with the closure of all facts and circumstances about himself, including certain social positions and doctrines, thus blinding the developing concept or knowledge of justice. With this concept Rawls leads the public to obtain the principle of fair equality with his theory known as "Justice as fairness"<sup>85</sup>

Furthermore, John Rawls emphasized his view on justice that the justice-enforcement program with a people's dimension must pay attention to two principles of justice, namely, first, giving equal rights and opportunities to the broadest basic

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<sup>83</sup> Pan Mohamad Faiz, 2009. “*Teori Keadilan John Rawls*”, dalam Jurnal Konstitusi, Volume 6 Nomor 1 , Hlm. 135

<sup>84</sup> Pan Mohamad Faiz, *Ibid*.

<sup>85</sup> John Rawls, 2006. “*A Theory of Justice*, London: Oxford University press”, yang sudah diterjemahkan dalam bahasa indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, (Yogyakarta: Pustaka Pelajar), hlm. 90



freedoms as broad as the same freedom for everyone. Second, being able to rearrange the existing socio-economic disparities so that they can provide reciprocal benefits<sup>86</sup>

The theory of justice is related to how justice can be accepted by all elements of society. In this case, business actors are in the field of Liquidfield Natural Gas. With this Supreme Court decision, it is hoped that it can provide justice to business actors in the field of Liquidfield Natural Gas.

**c. Authority.**

Law enforcement relating to the industrial world in which Indroharto is. Indroharto, put forward three kinds of authority that originate from statutory regulations. That authority includes<sup>87</sup>

- 1) attribution;
- 2) delegation; and
- 3) mandate.

Attribution is the granting of authority by the legislators themselves to an organ of government, either existing or completely new. Legislators who are competent to provide attribution of that authority are distinguished between:

- 1) The original legislators at the central level are the People's Consultative Assembly as the constitution-forming (constituent) and the People's Representative Council together with the government as those who give birth to a law, and at the regional level are the Regional People's Representative Council and the Regional Government which consider local regulation;
- 2) Who acts as a delegated legislator, such as the president based on a statutory provision to issue a government regulation whereby governmental powers are created to the State Administrative Body or Position.

Delegation is the transfer of authority that belongs to the organ of government to others. In the delegation it contains a handover, namely the authority of person A, which subsequently becomes the authority of person B. Mandate, there does not occur a new authorization or delegation of authority from one State Administration Agency or

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<sup>86</sup> Hans Kelsen, "*General Theory of Law and State*", diterjemahkan oleh Rasisul Muttaqien, (Bandung: Nusa Media, 2011), hlm. 7

<sup>87</sup> Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada, 2008), hlm. 104



official to another. The responsibility for authority on the basis of the mandate still rests with the mandate, does not shift to the mandate recipient<sup>88</sup>

F.M.M. Stroink and J.G. Steenbeek, as quoted by Ridwan HR, demonstrated that there are two ways government organs gain authority, namely:

- 1) attribution; and
- 2) delegation<sup>89</sup>

Attribution is concerned with the transfer of new authority, while delegation concerns the delegation of existing powers (by organs that have acquired attributive authority to other organs; so logically it is always preceded by attribution). The two ways in which government organs obtain this authority are used as the basis for exercising their authority.

Philipus M. Hadjon divides how to obtain authority in two ways, namely:

- 1) attribution; and
- 2) delegation and sometimes also mandate

Attribution is the authority to make decisions that derive directly from the law in a material sense. Attribution is also said to be a normal way of obtaining governmental authority. So it seems clear that the authority obtained through attribution by government organs is the original authority, because that authority is obtained directly from statutory regulations (especially the 1945 Constitution of the Republic of Indonesia). In other words, attribution means the emergence of new authority which previously did not belong to the relevant government organ.

Delegation is defined as the delegation of the authority to make a besluit by a government official (state administrative officer) to the other party. With the word submission, this means a transfer of responsibility from the delegate to the delegate recipient. A delegation must meet certain conditions, including:<sup>90</sup>

- 1) the delegation must be definitive, meaning that the delegates can no longer use the authority that has been delegated;

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<sup>88</sup> Salim HS, S. H., M.S., Erlies Septiana Nurbani, S. H., LL.M, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2014), hlm. 194

<sup>89</sup> Ridwan HR, *Op cit*, hlm. 105.

<sup>90</sup> Ridwan HR, *Ibid.*, hlm. 110

- 2) the delegation must be based on the provisions of the statutory regulations, meaning that the delegation is only possible if there are provisions for that in the statutory regulations;
- 3) delegation is not to subordinates, meaning that in the employee hierarchy relationship there is no delegation allowed;
- 4) obligation to provide information (explanation), which means that the delegation is authorized to request an explanation regarding the implementation of said authority;
- 5) policy regulation means that the delegation gives instructions on the use of this authority.

The term authority theory comes from the English translation, namely authority of theory, a term used in Dutch, namely *theorie van het gezag*, while in German it is *theorie der autoritat*. Authority theory comes from two syllables, namely theory and authority. Before explaining the definition of authoritarian theory, the following is presented the theoretical concept of authority. H. D. Stoud, as quoted by Ridwan HB, presents an understanding of authoritarianism. Authority is: The entire rules relating to the acquisition and use of governmental authority by public law subjects in public legal relations<sup>91</sup>

There are two elements contained in the definition of the concept of authority presented by H.D. Stoud, namely:

- 1) The existence of legal rules; and
- 2) The nature of the legal relationship.

Before the authority is delegated to the implementing institution, it must first be determined in statutory regulations, whether in the form of laws, government regulations or regulations of a lower level. The nature of a legal relationship is a nature that is related to and has a relationship or ties or is related to the law. There are legal relationships that are public and private.

Ateng Syafrudin presents the definition of authority. He discovered that<sup>92</sup>

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<sup>91</sup> Ridwan HR, *Ibid.*, hlm. 110.

<sup>92</sup> Ateng Syafrudin, *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggungjawab*, Jurnal Pro Justisia Edisi IV, (Bandung: Universitas Parahiyangan, 2000), hlm. 22.

"There is a difference between the meaning of authority and competence . We must distinguish between authority (authority, gezag) and authority (competence, bevoegheid). Authority is what is called formal power, power that comes from the power given by law, whereas authority only concerns a certain "onderdeel" (part) of the authority. Within the authority there are powers (rechtsbevoegdheden). Authority is the scope of public legal action, the scope of government authority. Not only includes the authority to make government decisions (bestuur), but includes the authority in the framework of carrying out duties, and gives the authority and distribution of the main powers stipulated in laws and regulations. "

Ateng Syafrudin not only presented the concept of authority, but also the concept of authority. The elements listed in the authority include:

- 1) The existence of formal power; and
- 2) Power is granted by law.

The elements of authority are only regarding a certain "onderdeel" (part) of authority<sup>93</sup> According to Philipus M. Hadjon, "in constitutional law the authority (bevoegdheid) is described as the rule of law (rechtmacht). So in the concept of public law, authority is related to the power<sup>94</sup>

The application of this theory of authority is of course related to the authority of the Minister of Finance in classifying goods as taxable and non-taxable goods based on Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times. lastly with Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, and also the authority of the Supreme Court in deciding the material test proposed by PT. DONGGI SENORO LNG.

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<sup>93</sup> Salim HS, S. H., M.S., Erlies Septiana Nurbani, S. H., LL.M. , *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2014), hlm. 184.

<sup>94</sup> Philipus M. Hadjon, "Tentang Wewenang" *Yuridika*, No. 5&6 Tahun XII, September-Desember, 1997, hlm.1

## 2. Safety and Healthy Program

a. The legal consequences arising from the Supreme Court Decision Number 05 P / HUM / 2018 against business actors in the natural gas mining sector using Liquefied Natural Gas.

1) The authority of the Supreme Court in examining statutory regulations under laws. In line with the theory of authority put forward by Indroharto, three kinds of authority are derived from statutory regulations. This authority includes:

- a) attribution;
- b) delegation; and
- c) mandate<sup>95</sup>

Attribution is the granting of authority by the legislators themselves to an organ of government, either existing or completely new. Legislators who are competent to provide attribution of that authority are distinguished between:

- a) which is positioned as the original legislator at the central level is the People's Consultative Assembly as the constitution-maker (constituent) and the People's Representative Council together with the government as the originator of the law, and at the regional level are the Regional People's Representative Council and the Regional Government which produce local regulation;
- b) who acts as a delegated legislator, such as the president based on a statutory provision to issue a government regulation whereby governmental powers are created to the State Administrative Body or Position.

Delegation is the transfer of authority that belongs to the organ of government to others. Delegation contains a handover, namely the authority of person A, which subsequently becomes the authority of person B. The authority that has been given by the delegator of the delegation is subsequently the responsibility of the recipient of authority.

Mandate, there does not occur a new authorization or delegation of authority from one State Administration Agency or official to another. The responsibility for authority

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<sup>95</sup> Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada, 2008), hlm. 104

on the basis of the mandate still rests with the mandate, does not shift to the mandate recipient<sup>96</sup>

A. Hamid S. Attamimmi, emphasized that the attribution of statutory authority means the creation of (new) authority by the constitution / grondwet or by legislators (wetgever) given to a state organ, both existing and newly formed.<sup>97</sup>

Based on the foregoing, it is true that a statutory regulation under a law is alleged to be contradicting the law, the examination is carried out by the Supreme Court.

## 2) Value Added Tax

Value Added Tax is a tax imposed on the delivery or import of taxable goods or services performed by a taxable entrepreneur, and can be imposed multiple times each time there is added value and can be credited.<sup>98</sup> Value Added Tax is a tax imposed on domestic consumption, both consumption of goods and consumption of services. Therefore, goods that are not in the customs area (exported) are subject to tax at a rate of 0% (zero percent). Conversely, imports of goods are subject to the same tax as domestic production. In accordance with considerations of economic, social, cultural conditions, not all types of goods and services are subject to tax.<sup>99</sup>

The objects of Value Added Tax are regulated in Article 4, Article 16C, and Article 16 D of Law Number 8 Year 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 42 of 2009 concerning Third Amendment to Law Number 8 Year 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

In Value Added Tax, a person or entity that is responsible for carrying out tax obligations, among others, to collect, deposit and report the Value Added Tax payable, is also called a *taxable person*).<sup>100</sup> The criterion that determines the person or entity

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<sup>96</sup> Salim HS., Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2014), hlm. 194

<sup>97</sup> A. Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara : Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I – Pelita VI*, (Disertasi, Fakultas Pasca Sarjana UI, Jakarta, 1990), hlm. 352.

<sup>98</sup> Early Suandy, *Hukum Pajak* (Jakarta: Salemba Empat, 2011). hlm. 56

<sup>99</sup> Waluyo dan Wirawan B. Ilyas. *Perpajakan Indonesia*, (Jakarta Salemba: Empat, 2002), hlm. 26

<sup>100</sup> Cahilril Anwar Pohan, *Pedoman Lengkap Pajak Pertambahan Nilai Teori, Knsep, dan Aplikasi PPN*, (Jakarta: PT. Gramedia Pustaka Utama, 2016), hlm. 67

carrying out the activity can be called an "entrepreneur", that is, the activity is carried out in his "business activity or worker".<sup>101</sup>

Based on Article 4, Article 16C and Article 16D of Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods and Article 3 of Government Regulation Number 1 of 2012 concerning Implementation Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, the subject of Value Added Tax can be grouped into 2 (two), namely:

- 1) Taxable person; and
- 2) Not a Taxable person.

Based on the Supreme Court Decision Number 05 P / HUM / 2018 against business actors in the natural gas mining sector who use Liquefield Natural Gas with the inauguration of taxable person, with this inauguration, individual entrepreneurs are obliged to report their business to the Director General of Taxes of the Ministry of Finance in the area of Its work includes the place where the entrepreneur lives and where the business is carried out, while for the entrepreneur the entity is obliged to report his business to the office of the Directorate General of Taxes whose working area is the place of residence of the entrepreneur and the place where business activities are carried out. The function of inaugurating a taxable entrepreneur is also used to determine the true identity of the taxable entrepreneur as well as to exercise rights and obligations in the field of value added tax and to supervise tax administration. Regulations related to the reporting of Value Added Tax result in administrative sanctions. Taxable Entrepreneurs may be subject to administrative sanctions such as fines and / or interest to criminal sanctions if they are late in making tax invoices and reporting periodic periodic reports. Value Added Tax and Luxury Goods Sales Tax

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<sup>101</sup> Untung Sukardji, *Pokok-Pokok PPN Pajak Pertamaban Nilai Indonesia*, Depok: Rajawali Pers, 2017), hlm. 61

collected by entrepreneurs are subject to tax, the deadline for payment on the 15th of the following month and the deadline for reporting the 20th of the following month.

- b. Implementation of Supreme Court Decision Number 05 P / HUM / 2018 by business actors in the natural gas mining sector using Liquefied Natural Gas.

In terms of Value Added Tax:

- 1) Liquefied Natural Gas becomes the object of Value Added Tax; and
- 2) Establishment of a Taxable Entrepreneur

The consequence is that Liquefied Natural Gas becomes the object of Value Added Tax, as stated in the legal consequences in number 1, where if the goods are taxable goods, the entrepreneur is taxable person. In the Value Added Tax what must be seen is the object. Whether the object is an object of Value Added Tax or not. If the object is an object of Value Added Tax, then the entrepreneur is a taxable person. In the case of Liquefied Natural Gas, it should have been 90 (ninety) days after the Supreme Court Decision was sent to the State Administration Agency or Official issuing the laws and regulations, in this case the Minister of Finance, the business actors in the natural gas mining sector using Liquefied Natural Gas must be confirmed as a taxable entrepreneur<sup>102</sup>

It turns out that with the Supreme Court Decision, the Cooperation Contract Contractor as the party that delivers Liquefied Natural Gas, must be confirmed as a taxable entrepreneur who has the potential to interfere with the Value Added Tax refund mechanism which should apply in accordance with the contract. The Cooperation Contract Contractor is not a taxable entrepreneur because all deliveries made are non-taxable goods. There are also more industries that need Liquefied Natural Gas in line with the increasing demand for energy. In addition, the use of Liquefield Natural Gas on a mini-scale will start in the next few years for small capacity power plants to increase the electrification ratio in Indonesia.

Mining business activities are activities that are not free from cooperation contracts. The cooperation contract has been carried out for a long time so that if there is a new regulation, the cooperation contract must be adjusted.

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<sup>102</sup> Donny Olfa Wijaya, Kepala Seksi Pajak Pertambahan Nilai Indusri, Direktorat Perpajakan I, Direktorat Jenderal Pajak, Kementerian Keuangan, Rabu, 11 April 2020, di Direktorat Perpajakan 1, Direktorat Jenderal Pajak, Kementerian Keuangan.



For example, one of the parties affected by Liquefield Natural Gas becomes the object of Value Added Tax, including the State Electricity Company (Persero). Previously, the State Electricity Company as one of the buyers of Liquefied Natural Gas did not have to bear an additional 10% Value Added Tax. However, with Liquefield Natural Gas being the object of Value Added Tax has the potential to increase the burden of government subsidies or may result in an increase in electricity prices which will burden the public as electricity users at the State Electricity Company.<sup>103</sup>

As additional information, since 2015 the government has been trying to suppress the increase in the basic electricity tariff, by determining Liquefield Natural Gas as a taxable item, the State Electricity Company has to take into account the imposition of Value Added Tax and administrative fines since the enactment of the Supreme Court Decision. In addition, it can be argued that the basic electricity tariff is a component of the basic cost of providing electricity. In the event that the basic electricity tariff appears to be an increase in one of the elements forming the basic cost of providing electricity, the difference is paid in the form of subsidies paid to the State Electricity Company. With the Supreme Court Decision currently waiting for business actors to be confirmed as Taxable Entrepreneurs, so they can carry out the Liquefied Natural Gas business process.

## **E. Conclusion and Recommendation.**

### **1. Conclusion.**

From the description and discussion of the legal consequences arising from the Supreme Court Decision Number 05 P / HUM / 2018 on business actors in the natural gas mining sector using liquefield natural gas based on Law Number 42 of 2009 concerning Amendments to Law Number 8 of 1983 Regarding Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, can be summarized as follows:

- a. Business actors in the natural gas mining sector using Liquefield Natural Gas must be confirmed as taxable entrepreneurs, and Liquefield Natural Gas becomes the object of taxable goods. With the inauguration of business actors in the natural gas mining sector

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<sup>103</sup> Donny Olfa Wijaya, *Ibid.*

that use Liquefield Natural Gas to become taxable entrepreneurs, taxable entrepreneurs must exercise their rights of obligations as taxable entrepreneurs. If they do not immediately confirm that they are taxable entrepreneurs, entrepreneurs in the mining sector cannot carry out the Liquefield Natural Gas business process and if they are late, they must pay the tax principal in accordance with the amount of tax underpayment in the tax underpayment assessment letter plus administrative sanctions in the form of interest of 2% ( two percent) per month no later than 24 (twenty four) months from the time the tax becomes due or the end of the tax period, the portion of the year

- b. Individual entrepreneurs are obliged to report their business to the Director General of Taxes of the Ministry of Finance, whose working area includes the entrepreneur's residence and business activities, while corporate entrepreneurs are obliged to report their business to the office of the Directorate General of Taxes whose working area is the place where the entrepreneur is located and where the business is carried out. .
- c. The implementation of the Supreme Court Decision Number 05 P / HUM / 2018 by business actors in the natural gas mining sector using Liquefield Natural Gas raises several things that need to be done by business actors, including the need to adjust cooperation contracts.

## **2. Recommendation.**

The suggestions that can be given such as :

- a. The government, in this case the Ministry of Finance is expected to be able to compile a new finance minister regulation as mandated in the provisions of Article 7 of Government Regulation Number 1 of 2012 concerning Implementation of Law Number 8 of 1983 concerning Value Added Tax for Goods and Services and Sales Tax on Luxury Goods as already several times amended most recently by Law Number 42 of 2009 concerning the Third Amendment of Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.
- b. If Liquefield Natural Gas has a strategic role in encouraging national development, there is nothing wrong if Liquefield Natural Gas is given the tax facilities that are really needed, especially for the success of the high priority economic activity sector. This is in line with the provisions of Article 16B of Law Number 8 of 1983 concerning Value

Added Tax on Goods and Services and Sales Tax on Luxury Goods as amended several times, most recently by Law Number 42 of 2009 concerning the Third Amendment to Law Number 8. 1983 regarding Value Added Tax on Goods and Services and Sales Tax on Luxury Goods which allows Liquefied Natural Gas to be object of Value Added Tax which is not collected in part or in whole or is exempted from taxation, either temporarily or permanently.

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